

design including a justification for taking the species and a description of the techniques to be used, and a point of contact.

(3) The CDFG and ODFW, respectively, annually provide NMFS with the results of research and monitoring studies directed at SONCC coho salmon, including a report of the directed take resulting from the studies.

(4) The CDFG and ODFW, respectively, provide NMFS annually with a list of all research and monitoring studies each permits that may incidentally take listed coho salmon during the coming year and report the level of incidental take of listed coho salmon from the previous year's research and monitoring activities, for NMFS' review and approval.

(5) The research and monitoring activities do not include the use of electrofishing in any body of water known or suspected to contain coho salmon.

(e) Incidental take of the SONCC coho salmon in Oregon that results from a habitat restoration activity, as defined in paragraph (4), is not prohibited, *provided that*:

(1) The activity is conducted pursuant to a watershed action or restoration plan that the state has affirmed in writing is consistent with state watershed plan guidelines that NMFS has found meet the standards set forth in 50 CFR 222.22(c), and NMFS concurs in writing that the plan is consistent with those guidelines; or

(2) Until a watershed action or restoration plan is approved by both Oregon and NMFS as described in paragraph (e)(1) of this section, or until August 18, 1999, whichever occurs first, the ODFW has made a written finding that the activity is consistent with state restoration activity guidelines that NMFS has agreed in writing meet the standards set forth in 50 CFR 222.22(c); or January 19, 1998.

(3) Until January 20, 1998, the activity is any restoration action listed in the Southwest Oregon Salmon Restoration Initiative (OCSRI ch. 17F), provided that any action involving in-water work receives written approval from ODFW as to timing, scope, and methods.

(4) "Habitat restoration activity" is defined as an activity that has the sole objective of restoring natural aquatic or riparian habitat conditions or processes.

(f) Incidental take of the SONCC coho salmon in California that results from a habitat restoration activity, as defined in paragraph (3) of this section, is not prohibited, provided that California has a program in effect that NMFS finds will assure technically supported watershed assessments and coordinated long-term monitoring strategies for watershed protection plans and activities and:

(1) The activity is conducted pursuant to a watershed protection plan that CDFG has affirmed in writing is consistent with state watershed plan guidelines for California's Watershed Protection Program that NMFS has found meet the standards set forth in 50 CFR 222.22(c), and NMFS concurs in writing that the plan is consistent with those guidelines; or

(2) Until a watershed protection or restoration plan is certified by the State of California and NMFS as described in paragraph (f)(1) of this section, or until August 18, 1999, whichever occurs first, NMFS has made a written finding that the activity is consistent with State of California conservation guidelines that NMFS has previously found meet the standards set forth in 50 CFR 222.22(c).

(3) "Habitat restoration activity" is defined as an activity that has the sole objective of restoring natural aquatic or riparian habitat conditions or processes.

[62 FR 38484, July 18, 1997]

Subpart D—Threatened Marine Reptiles

§ 227.71 Prohibitions.

(a) Except as provided in § 227.72, the prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to any species of sea turtle enumerated in § 227.4.

(b) Except as provided in § 227.72, it is unlawful for any person subject to the jurisdiction of the United States to do any of the following:

(1) Own, operate, or be on board a vessel, except if that vessel is in compliance with all applicable provisions of § 227.72(e);

(2) Fish for, catch, take, harvest, or possess, fish or wildlife while on board a vessel, except if that vessel is in compliance with all applicable provisions of § 227.72(e);

(3) Fish for, catch, take, harvest, or possess, fish or wildlife contrary to any notice of tow-time or other restriction specified in, or issued under, § 227.72(e) (3) or (6);

(4) Possess fish or wildlife taken in violation of paragraph (b) of this section;

(5) Fail to follow any of the sea turtle handling and resuscitation requirements specified in § 227.72(e)(1);

(6) Possess a sea turtle in any manner contrary to the handling and resuscitation requirements of § 227.72(e) (1);

(7) Fail to comply immediately, in the manner specified at 50 CFR 620.8 (b)–(d), with instructions and signals specified therein issued by an authorized officer, including instructions and signals to haul back a net for inspection;

(8) Refuse to allow an authorized officer to board a vessel, or to enter an area where fish or wildlife may be found, for the purpose of conducting a boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(9) Destroy, stave, damage, or dispose of in any manner, fish or wildlife, gear, cargo, or any other matter after a communication or signal from an authorized officer, or upon the approach of such an officer or of an enforcement vessel or aircraft, before the officer has an opportunity to inspect same, or in contravention of directions from the officer;

(10) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere with an authorized officer in the conduct of any boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(11) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person committed an act prohibited by this section;

(12) Resist a lawful arrest for an act prohibited by this section;

(13) Make a false statement, oral or written, to an authorized officer or to the agency concerning the fishing for, catching, taking, harvesting, landing, purchasing, selling, or transferring fish or wildlife, or concerning any other matter subject to investigation under this section by such officer, or required to be submitted under this part 227;

(14) Sell, barter, trade or offer to sell, barter, or trade, a TED that is not an approved TED; or

(15) Attempt to do, solicit another to do, or cause to be done, any of the foregoing.

(c) In connection with any action alleging a violation of this section, any person claiming the benefit of any exemption, exception, or permit under this subpart D has the burden of proving that the exemption, exception, or permit is applicable, was granted, and was valid and in force at the time of the alleged violation. Further, any person claiming that a modification made to a TED that is the subject of such an action complies with the requirements of § 227.72(e) (4)(iii) has the burden of proving such claim.

[57 FR 57354, Dec. 4, 1992]

§ 227.72 Exceptions to prohibitions.

(a) *Scientific, propagation, or survival permits.* (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under § 227.71 for scientific purposes or to enhance the propagation or survival of such species. Applications for these permits are subject to the provisions of part 220 of this chapter II.

(2) Ongoing scientific, propagation, or survival projects, which would otherwise be prohibited by § 227.71 may continue without a permit until an application for a permit has been denied or 90 days from the effective date of the listing of the effected species, whichever comes first. If a permit has not been denied, ongoing projects may continue beyond this 90-day period provided that the individual responsible for such project(s) has applied for a permit and receives a letter from the Assistant Administrator stating that